

### **REMARKS**

This is in response to the Office Action mailed April 6, 2009. Applicants thank the Examiner for the telephonic interview of May 11, 2009, during which proposed claim amendments was discussed. Applicants believe that the present amendments to the claims place the application in condition for allowance, by adopting the claim amendment suggestions discussed at the interview.

After entry of this amendment, claims 1, 3-7, 39, and 44-46 are pending. Applicants respectfully request entry of the above claim amendment as it is believed to put the claims in condition for allowance or, alternatively, in better form for consideration on appeal. Thus, entry under 37 CFR 1.116 is correct. Claim 1 has been amended without prejudice or disclaimer and finds support *inter alia* in the original claim. No new matter has been added.

#### **Rejection under 35 U.S.C. § 112, first paragraph**

Claims 1, 3-7, 39, and 44-45 stand rejected under 35 U.S.C. 112, first paragraph, for allegedly failing to comply with the written description requirement. In maintaining the rejection, the Examiner contends that the NBS and LRR domains disclosed in the specification are common to genes associated with pathogen resistance and, thus, are not specific functions associated exclusively with the claimed genus. Additionally, the Examiner contends that the specification fails to disclose a representative number of species because the specification does not disclose any functional fragment of SEQ ID NO: 2 or 4. Applicants respectfully disagree. However, to expedite prosecution, the claims have been amended without prejudice or disclaimer to recite the Rpi-blb2 protein encoding nucleic acid molecule with more specificity. Applicants respectfully request reconsideration and withdrawal of the rejection in light of the present amendment and for the following reasons.

As discussed in the response dated February 2, 2009, the specification discloses six actual sequences related to the claimed nucleic acid, *i.e.* four nucleotides sequences SEQ ID NOs: 1, 3, 5, and 6, which encode the sequence of SEQ ID NO: 2 or SEQ ID NO: 4. Because the genetic code and its redundancies were known in the art at the time of filing, the disclosure of SEQ ID NO: 2 and SEQ ID NO: 4, combined with the pre-existing knowledge in the art, would have put one in possession of the genus of nucleic acids that encodes SEQ ID NO: 2 and SEQ ID NO: 4. With the aid of a computer, one skilled in the art could have identified all of the nucleic acids that encode a polypeptide with at least 95% homology with SEQ ID NO: 2 and SEQ ID NO: 4.

Thus, one of ordinary skill in the art would conclude that Applicants were in possession of the claimed genus as amended at the time the application was filed.

Furthermore, as described in the specification at page 17, lines 1-7, natural variations (e.g. DNA sequence polymorphisms) can lead to alterations in the amino acid sequences of the Rpi-blb2 sequences within a population, bringing about a variation of 1-5% in the nucleotide sequence of the Rpi-blb2 gene without altering the functional activity of the Rpi-blb2. Accordingly, the claim scope created by the recitation of at least 95% identity with SEQ ID NO: 2 or SEQ ID NO: 4 includes the expected range of natural polymorphic variants, which should certainly within the scope of the invention.

The specification, therefore, provides a description of an actual reduction to practice. As such, one skilled in the art, reading the specification, would reasonably conclude that Applicants were in possession of the invention that is now claimed at the time of filing. Accordingly, the written description requirement is satisfied. Reconsideration and withdrawal of the rejection is respectfully requested.

### CONCLUSION

For at least the above reasons, Applicants respectfully request withdrawal of the rejections and allowance of the claims.

Applicants reserve all rights to pursue the non-elected claims and subject matter in one or more divisional applications.

This response is filed within the three-month period for response from the mailing of the Office Communication. Applicants believe no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 03-2775, under Order No. 13477-00002-US from which the undersigned is authorized to draw.

Respectfully submitted,

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